IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9546 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SALIM ALIAS MORCUS MUNIRKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9546 of 2002

MS JAYSHREE C BHATT for Petitioner No. 1

MISS NANDINI JOSHI Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 29/04/2003

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the detention

order passed by the Police Commissioner, Ahmedabad City dated 5.9.2002 in exercise of powers vested under him by sub-section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as the "PASA Act") branding the petitioner-detenu as dangerous person within the meaning of sec. 2(c) of the PASA Act.

Ld. counsel for the petitioner has taken me through the memo of petition and the number of grounds challenging the legality and validity of the order of detention, however, Mr. Dave has concentrated his arguments mainly on one point. According to Mr. Dave, this is a case of unexplained delay in passing the order of detention against the present petitioner. It is submitted that about 10 persons are detained by the authority and few of them have been set at liberty on certain other grounds and infirmity found by this Court. The offence registered against the present petitioner is dated 12.3.2002 and was arrested for the first time on 18.8.2002. It is submitted that the order of detention could have been passed much earlier in view of the facts mentioned in the grounds for detention but it seems that even no proposal was made to the authority till the date of arrest of the present petitioner.

The additional affidavit filed by Commissioner of Police, City of Ahmedabad is tendered today by Ms. Joshi ld. AGP for the respondent-State clearly indicates that the proposal made by the Sponsoring Authority was received by the detaining authority for the first time on 2.9.2002. The time spent by the date of offence till 2.9.2002 is not satisfactorily explained by the otherside. It is settled proposition of law that the delay caused in passing the order of detention is fatal infirmity and it goes to the root of the validity of the order. Though Mr. Dave has also submitted that in view of the averments made in this petition by way of amendment and the further affidavit filed it can also be inferred that the order passed by the authority on 5.9.2002 can be said to be passed mechanically and without proper application of mind. He has tried to point out that on 5.9.2002 the Sponsoring Authority had submitted certain documents before the Authority and on that very day, the order of detention is passed, but I am not inclined to comment upon this aspect of argument advanced by Mr. Dave because the petition is requires to be allowed solely on the ground that the delay in passing the detention order is unexplained. The petitioner therefore deserves to be allowed.

In the result, this petition is allowed. The

impugned order of detention dated 5.9.2002 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner-detenu- Salim @ Morcus Munnirkhan Pathan is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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